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MEMORANDUM

TO: Honorable Members of the Senate Committee on Public Health, Senior Issues, Long-Term Care, and Job Creation

FROM: Sarah Diedrick-Kasdorf, Senior Legislative Associate *SD*

DATE: February 17, 2010

SUBJECT: Senate Bill 503 - Financial Exploitation

The Wisconsin Counties Association (WCA) appreciates the opportunity to comment on Senate Bill 503, which requires county elder-adult-at-risk and adult-at-risk agencies to petition the court to freeze an individual's assets if the agency conducts an investigation that indicates that the individual is the subject of financial exploitation.

A number of our county agencies have expressed concern over the language requiring the agency to file a petition with the court to freeze assets if after an investigation the county believes an individual is the subject of financial exploitation. However, we understand an amendment to the bill is forthcoming which changes the mandate to an option. If such an amendment is incorporated into the language of the bill, the Wisconsin Counties Association has no objections.

Thank you for considering our comments.

Elder Law Section Board



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February 17, 2010

TO: Members of Senate Public Health, Senior Issues, Long-Term Care & Job Creation Committee

FR: Attorney Ben Adams
Chair, Elder Law Section

RE: SB503/AB 691 – elder financial abuse

The Elder Law Section is comprised of a cross-section of practitioners who work to protect the rights of our clients and consumers. As attorneys, we work to develop and improve the laws that affect the elderly, and promote high standards of ethical performance and technical expertise for those who practice in the area.

We appreciate the desire to protect Wisconsin citizens from potential financial exploitation and abuse and thank Senator Kreitlow for his efforts. However, we have concerns about SB 503/AB 691 and would appreciate the opportunity to work with you on alternative language.

The Elder Law Board has voted to actively oppose this bill for the following reasons:

- (1) Financial exploitation is more appropriately investigated by law enforcement than social workers in adult-at-risk agencies. The elder abuse and adult-at-risk statutes (sec. 46.90 and 55.043, Wis. Stats.) already contain provisions that permit adult-at-risk agencies to immediately refer cases to law enforcement for further investigation and law enforcement already has this, and many other, appropriate tools and strategies.
- (2) The bill mandates, rather than permits, adult-at-risk agencies to seek the court order. That means that county adult-at-risk agencies (and their corporation counsels) would be required to devote time and resources seeking to freeze bank accounts whether or not that was needed in a particular situation. This could eat up a lot of county employees' time.
- (3) Requiring the freezing of bank accounts in every case may have other consequences. At a minimum, checks that a person or a conscientious agent under a power of attorney is writing to pay for utilities, rent, necessities, etc., will bounce because of the account

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being frozen, this will cause headaches and additional costs for banks and adults-at-risk account holders. At worst, freezing an account could prove more dangerous to a victim of financial exploitation by further enraging an abuser. Freezing the account could also impede a law enforcement investigation that may be tracking an account to determine whether the alleged abuser continues to engage in illegal activities with the account. Additionally, the procedural sections allowing the temporary restraining order to be issued and the account to be frozen without notice, even to the alleged victim, could further victimize the individual when he or she finds out that the account has been frozen and is no longer available for the legitimate use of the account holder.

(4) The current individual-at-risk restraining order in sec. 813.123 already permits an adult-at-risk agency, or any other interested person, to seek a restraining order in cases of elder/adult-at-risk abuse, including financial exploitation to, for example, restrain a financially exploiting individual from getting anywhere near a bank account. This would still permit the victim's bills to be paid from this account by him/herself or a conscientious agent under a power of attorney.

(5) Other alternatives would be to consider a bill that would permit an elder/adult-at-risk agency to assist an account holder in placing a voluntary freeze on an account.

Again, we appreciate your efforts. We share your concern for the protection of vulnerable individuals and look forward to working with you. Thank you for your consideration of these issues.

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.

If you have questions about this memorandum, please contact Sandy Lonergan, Government Relations Coordinator, at slonergan@wisbar.org or (608) 250-6045.